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JAMES AND FRANKLIN
60 EAST 42ND STREET
SUITE 1217
NEW YORK NY 10165

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OFFICE OF PETITIONS

In re Patent No. 5,924,578 :
Martha McKenzie :
Issue Date: July 20, 1999 : DECISION ON PETITION
Application No. 08/811,772 :
Filed: March 7, 1997 :
Attorney Docket No. MCK-1 :
:

This is a decision on the REQUEST FOR RECONSIDERATION OF DECISION ON PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF MAINTENANCE FEE filed September 21, 2011.

The petition is granted.

The patent issued July 20, 1999. The first maintenance fee was timely paid without surcharge on January 9, 2003. The grace period for paying the 7-½ year maintenance fee expired at midnight on July 20, 2007, with no payment received. (The window to pay the third maintenance fee closes on July 20, 2011. It is noted that the instant petition includes an authorization to charge any required fees, including the 11 ½ year fee).

On April 29, 2011, the initial petition was filed. The petition included payment of the second maintenance fee (\$1240) and the late surcharge where the delay is unavoidable (\$700). By decision mailed August 26, 2011, the petition was dismissed for failure to establish that the delay in payment of the maintenance fee was unavoidable within the meaning of 37 CFR 1.378(b). Petitioner stated that "[d]espite the institution of several checks in the process, and for an unknown reason which is still being investigated, the information related to the instant patent is not in the new electronic docketing system and the physical file cannot be located." This statement was not

supported by evidence of a delay resulting from an error (e.g., a docketing error) on the part of an employee in the performance of a clerical function.

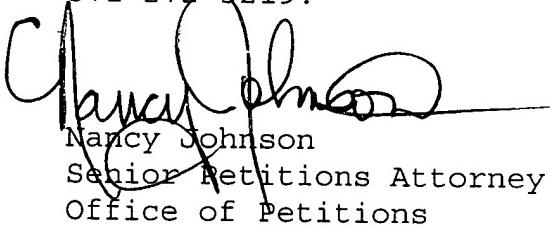
On instant renewed petition, patentee has identified the docketing error that was the cause of the delay in payment of the maintenance fee (i.e., a data entry error in entering the patent issue date), provided a copy of the docket record, named the employee who committed the error and provided her statement, described the system in place for performing the data entry in the transfer of files, including the training undertaking by the employee and her overall experience and the checks in place to ensure that the function was completed correctly.

In light of the showing of record, it is concluded that the delay was unavoidable since reasonable care was taken to ensure that the maintenance fee would be timely paid.

Receipt of the \$400 fee for reconsideration is acknowledged.

Accordingly, the maintenance fee in this case is hereby accepted and the above identified patent is hereby reinstated as of the mail date of this decision. The third maintenance fee is being charged to the Deposit Account, as authorized.

Telephone inquiries should be directed to the undersigned at 571-272-3219.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions